



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02972

Appearances

For Government: Andre Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

07/21/2017

Decision

DAM, Shari, Administrative Judge:

Applicant's history of delinquent debts began in 2008 with the construction of a new home. He failed to mitigate the resulting financial security concerns. National security eligibility for access to classified information is denied.

Statement of the Case

On January 6, 2012, Applicant submitted a security clearance application (SF 86) for re-investigation. On November 20, 2015, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within the DOD for SORs issued after September 1, 2006.¹

¹I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. Although this decision is issued pursuant to the new AG, my decision would be the same under either set of guidelines.

On May 5, 2016, Applicant answered the SOR (Answer), and requested a hearing. On September 28, 2016, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On December 21, 2016, DOHA issued a Notice of Hearing, setting the hearing for January 18, 2017. At said hearing, Department Counsel offered Exhibits (GE) 1 through 6. Applicant testified and offered Exhibits (AE) 1 through 9. All exhibits were admitted. DOHA received the hearing transcript (Tr.) on January 26, 2017. The record remained open until February 15, 2017, to give Applicant an opportunity to submit additional information. He submitted two documents that I marked as AE 10 and AE 11 and admitted into evidence without an objection from Department Counsel.

Procedural Rulings

At the commencement of the hearing, Department Counsel moved to withdraw the allegations in SOR ¶¶ 1.e, 1.g, and 1.i. Applicant did not object. Said motion was granted (Tr. 8.)

Findings of Fact

Applicant admitted the allegations contained in SOR ¶¶ 1.c, 1.i, and 1.j. He denied the allegations in SOR ¶¶ 1.a, 1.b, 1.d, 1.f, 1.h, and 1.k. (Answer.) His admissions are accepted as factual findings.

Applicant is 64 years old and married for 33 years. He and wife have two adult children. He enlisted in the Army in 1970 and retired with an honorable discharge in 1995. He was a chief warrant officer 3 (CW3). He held a security clearance while serving. He has an associate's and a bachelor's degree.

After leaving military service, Applicant owned a business for five years. In 2002 he became an employee of a defense contractor, for whom he worked until February 2010 when he was laid off. In May 2010 he went to the Middle East with a different defense contractor and worked there for four years. Since 2014 he has worked for another defense contractor. (Tr. 21-30.) He recently received a performance evaluation from his employer. He is one of the top seven performers. (Tr. 27.) He has been training soldiers since his retirement. (Answer.)

Applicant attributed his financial problems to unanticipated construction costs he encountered when he built a new home in 2008. He said he was "semi-debt free" prior to that time. (Tr. 31.) The building site had numerous structural issues that needed costly corrections in order to build on it. Applicant depleted his 401(k) and savings attempting to resolve the problems. He lost about \$270,000 during the process, which included tax penalties for removing money from his retirement account. His wife also withdrew money from her retirement account. In 2007, Applicant sued the builder for breach of contract. That suit was resolved in 2016. Applicant was on a repayment plan with the Internal Revenue Service (IRS) from 2009 until last year when he finished payments. (Tr. 32-34; AE 2, AE 3, AE 4.)

Based on credit bureau reports (CBR) from January 2012, July 2012, December 2014, and September 2016, the amended SOR alleged nine delinquent debts, totaling about \$52,825.² (Tr. 35; GE 2, GE 3, GE 4, GE 5.) Applicant has been working with a law firm to repair his credit. The law firm has not made any payments on his debts. He said he paid all debts that he or the law firm validated. (Tr. 43.) The status of each alleged debt is as follows:

SOR ¶ 1.a: In his 2012 SF 86, Applicant disclosed a delinquent debt owed to a credit card company. That debt was subsequently sold to the creditor referenced in this allegation and appears on his July 2012 and December 2014 CBRs. Applicant admitted owing the \$23,015 debt to the original creditor and that it was unpaid. He denied owing it to the SOR listed creditor because he could not validate it as the original debt. The debt does not appear on his 2016 credit reports. (Tr. 36-38, 45, 63; GE 1, GE 3, GE 4; AE 1.) There is insufficient evidence to conclude that Applicant responsibly resolved this debt.

SOR ¶ 1.b: In his 2012 SF 86, Applicant disclosed a delinquent debt owed to a lumber company creditor. That debt was sold to the creditor referenced in this allegation and appears on his July 2012 and December 2014 CBRs. In response to the SOR, he denied owing the alleged \$18,398 debt to the creditor because it had not been validated as being his debt. While testifying he admitted he owed the original debt, but he was unsure that he paid it. The debt does not appear on his 2016 CBRs. (Tr. 35-36; 45-48, 66; GE 1, GE 3, GE 4; Answer; AE 1.) There is insufficient evidence to conclude that Applicant responsibly resolved this debt.

SOR ¶ 1.c: Applicant paid and resolved the \$2,534 credit card debt in December 2014. (Tr. 35; Answer.)

SOR ¶ 1.d: Applicant paid and resolved the \$3,101 credit card debt in May 2012. (Tr. 50; AE 9.)

SOR ¶ 1.e: Withdrawn

SOR ¶ 1.f: Applicant denied the charged-off credit card debt for about \$18,000 because he has no evidence from the current creditor that it is his debt.³ It does not appear on his 2016 CBRs, but does appear on his December 2014 CBR. (Tr. 67.) There is insufficient evidence to conclude that Applicant responsibly resolved this debt.

SOR ¶ 1.g: Withdrawn

SOR ¶ 1.h: In his 2012 SF 86, Applicant disclosed a delinquent debt owed to a credit card company. In response to the SOR, he denied owing the alleged \$18,240 debt because it does not appear on his 2016 CBRs (Answer).⁴ However, it appeared on his

² Four SOR allegations do not include an amount as noted below. Those debts total over \$44,445.

³The amount of this debt is not alleged in the amended SOR and is based on the December 2014 CBR.

⁴The amount of this debt is not alleged in the amended SOR and is based on the December 2014 CBR.

July 2012 and December 2014 CBRs. (Tr. 37-38; GE 1, GE 4; Answer.) There is insufficient evidence from which to conclude that Applicant responsibly resolved this debt.

SOR ¶ 1.i: Applicant admitted owing the \$5,777 charged-off debt during an interview with a government investigator. He told an investigator that he intended to make payments on it. He testified that it was paid and agreed to submit documentation verifying that. He did not provide any information. (Tr. 50-51, 68; GE 6.) The debt is unresolved.

SOR ¶ 1.j: Applicant successfully resolved this \$2,476 credit card debt. (Tr. 50; AE 9.)

SOR ¶ 1.k: Applicant disclosed this delinquent student loan for \$5,729 in his 2012 SF 86.⁵ He co-signed it for his sister-in-law and said she resolved it. He did not provide documentation verifying its resolution. (Tr. 51-52, 68; GE 1, GE 2.) It is unresolved.

SOR ¶ 1.l: Withdrawn

Applicant and his wife have a combined annual income of \$187,456. He submitted a budget. Their net monthly income is \$10,489 and expenses are \$9,424. They save about \$400 each month, leaving a \$765 surplus. (Tr. 31; AE 7.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence

(GE 4.)

⁵ The amount of this debt is not alleged in the amended SOR and is based on the December 2014 CBR.

contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. According to Directive ¶ E3.1.15, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.

A person applying for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting

classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁶

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Beginning in 2008, Applicant accumulated large delinquent debts that he has been unable or unwilling to resolve. The evidence raises the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from financial problems:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

⁶ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

Applicant's delinquent debt problems began in 2008 when he started construction on a new house. He did not have financial difficulties up to that time. He subsequently sued the builder and the contractual issues appear to be resolved. The debts that accumulated are a consequence of the construction. They are unlikely to recur and do not cast doubt on Applicant's trustworthiness. AG ¶ 20 (a) provides some mitigation.

Those circumstances were beyond Applicant's control. However, there is insufficient evidence to apply full mitigation under AG ¶ 20(b) because Applicant did not provide information about the actions he took while the debts were accumulating. He did state that he implemented a repayment plan in 2009 with the IRS to resolve tax debts resulting from the withdrawal of monies from his 401(k) to pay additional construction costs and that he recently completed payments on the plan.

There is no evidence that Applicant participated in credit or financial counseling and there are no clear indications that the unresolved SOR-alleged debts are under control. AG ¶ 20(c) does not apply. Applicant made a good-faith effort to resolve the debts alleged in SOR ¶¶ 1.c (\$2,534), 1.d (\$3,101), and 1.j (\$2,476). The evidence established mitigation under AG ¶ 20(d) as to those three debts.

Applicant denied the allegations in SOR ¶¶ 1.a (\$23,015), 1.b (\$18,398) 1.f (\$18,000), and 1.h (\$18,240). He disputed them because he asserted they were paid or not his debts. He noted that they had been deleted from a recent credit report. He did not provide evidence substantiating a reasonable basis for denying or disputing the debts given the fact that he admitted owing them prior to their transfer to subsequent creditors. AG ¶ 20(e) does not apply. He did not provide proof that the allegations in SOR ¶¶ 1.i (\$5,777) and 1.k (\$5,729) are resolved.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature, 64-year-old man who honorably served in the Army for over 24 years. He has subsequently worked for defense contractors since 2002. He has held a security clearance for many years. While those are positive factors in favor of granting him a security clearance, his history of financial problems since 2008 outweighs those facts. He has not provided credible evidence that he resolved six of the nine delinquent debts alleged in the amended SOR, which total more than \$96,000. Based on that lack of evidence, he has not demonstrated a record of financial reliability and responsibility. Applicant did not meet his burden of persuasion to mitigate the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraphs 1.c and 1.d:	For Applicant
Subparagraph 1.e:	Withdrawn
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Withdrawn
Subparagraphs 1.h and 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Withdrawn

Conclusion

In light of all circumstances presented by the record in this case, it is not clearly consistent with the national interest to continue Applicant's security clearance. National security eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge